Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	DOCKET FILE COPY ORIGINAL
Amendment of Part 20 and 24	)	
of the Commission's Rules -	)	WT Docket 96-59
Broadband PCS Competitive Bidding	)	
and the Commercial Mobile Radio	)	
Service Spectrum Cap	)	
	)	
Amendment of the Commission's	)	Gen. Docket 90-314
Cellular-PCS Cross-Ownership Rules	)	

TO: The Commission

REPLY COMMENTS OF SPRINT SPECTRUM AND AMERICAN PERSONAL COMMUNICATIONS

Sprint Spectrum L.P.[1/] and American Personal Communications ("APC")[2/] oppose the efforts of certain cellular companies to dismantle the effective structure the Commission has established to encourage competition among cellular and PCS licensees. The proposals to eliminate the 40 MHz spectrum cap are not called for either by the Cincinnati Bell remand nor current marketplace conditions.[3/] This docket

---

[1/] Sprint Spectrum L.P. ("Sprint Spectrum"), formerly the Sprint Telecommunications Venture, is a joint venture formed by subsidiaries of Sprint Corporation, Tele-Communications, Inc., Comcast Corporation, and Cox Communications, Inc. that will offer PCS through WirelessCo, L.P. and PhillieCo, L.P.

[2/] American PCS, L.P., d/b/a American Personal Communications ("APC"), a limited partnership in which APC, Inc. is the sole managing general partner and 51 percent equity holder and WirelessCo, L.P. is a 49 percent limited partner.

[3/] See Cincinnati Bell v. Federal Communications Comm'n, 69 F.3d 752 (6th Cir. 1995) ("Cincinnati Bell").

supplies no record basis whatsoever for any alteration in the spectrum cap or in the PCS-cellular cross-ownership rules.[4/]

I.

First, the 40 MHz spectrum cap was not challenged by any of the parties in Cincinnati Bell (or elsewhere, either on reconsideration or appeal) and this rule thus was not an issue in that case. Accordingly, any arguments based on dicta from that case -- or, even less persuasively, the arguments of the parties in that case -- are simply irrelevant.[5/] The Commission need not and should not expand its consideration of the remand of that case to encompass a rule that was not involved in Cincinnati Bell.[6/]

II.

Second, the 40 MHz spectrum cap is an important and sensible rule that should be retained.

A.

The Commission adopted that rule on an exhaustive record, compiled over three years and a lengthy en banc

---

[4/] See, e.g., Comments of PCIA; Sprint Corp.; DCR Communications, Inc.; Telephone & Data Systems, Inc.; Cook Inlet Region, Inc.; Conestoga Wireless Co.; North Coast Mobile Communications, Inc.; Mountain Solutions; Vanguard Cellular Systems, Inc.; Telephone Electronics Corp.

[5/] See, e.g., Comments of GTE Service Corp. at 8-9; Comments of BellSouth at 2-3.

[6/] Antitrust principles are similarly irrelevant. The Communications Act exists to further competition and diversity, not simply to police possible anticompetitive behavior. The Commission clearly has authority to proactively further competition by encouraging a diverse and vibrant marketplace; antitrust laws simply cannot serve these values.

hearing, of the benefits of bringing new competition to the wireless telecommunications marketplace. This new competition simply will not be possible if incumbent cellular providers are permitted to acquire both the Block D and E PCS spectrum blocks in the very markets where they provide cellular service. PCS carriers will be handicapped in competing effectively against combined PCS/cellular carriers with 45 MHz of spectrum and an existing cellular subscriber base. The promise of spirited, new competition would be endangered in favor of permitting incumbent cellular carriers to further build upon the advantage of the free spectrum that was given to them in the 1980s.

Cellular licensees already have 25 MHz of clear spectrum. They have entrenched physical plants -- often, dozens or even hundreds of zoned and operating cell sites over large, regional areas -- and sales and technical infrastructures developed over years of service. They have unparalleled name recognition and consumer acceptance within their home regions. They have established agents, dealers, resellers, and billing systems. And they provide portable wireless services right now with their cellular spectrum and will do so even more in the future as they recapture spectrum by implementing digital systems.

As APC's launch has demonstrated dramatically, independent PCS licensees will compete successfully with

entrenched cellular companies.[7/] If both cellular and PCS licensees are in the same hands, however, that competition will not develop or, at best, will be muted. A PCS licensee would not be able to compete effectively against a company that holds both a cellular license and 20 MHz of PCS spectrum. That company would have a staggering head start against a newcomer. It would have joint sales, marketing, and other staffs, joint interconnection arrangements, and joint facilities. The independently owned PCS licensee could never compete fairly against such an entrenched business, assuming it could even obtain financing to get off the ground under these significantly changed circumstances.

B.

The 40 MHz spectrum cap is, in fact, working precisely as the Commission contemplated. Based on the state of the rules in existence throughout both the Block A/B auction and the Block C auction, numerous new entrants have emerged to bid aggressively on 30 MHz PCS licenses. These bidders have relied on the Commission's rules in entering the PCS market and are working to bring much-needed competition to the wireless marketplace. Had the Commission's rules provided that cellular carriers would be eligible to obtain 20 MHz in PCS spectrum in their home markets in addition to 25 MHz of

---

[7/] In its first few months of operation, APC has attracted more than 60,000 subscribers -- a rate of growth that likely makes it one of the fastest-growing wireless launches in the world.

clear cellular spectrum, the competitive equation undoubtedly would have been very different for these new entrants -- we believe that many, if not most, would not have sought PCS licenses at all under these conditions. Cellular carriers, too, were encouraged by the structure of the Commission's rules to bid aggressively outside of their home markets to assemble service areas with broad geographic reach. Had the Commission's rules provided that cellular carriers could simply acquire 20 MHz of PCS spectrum in their own markets, these carriers undoubtedly would have followed different strategies.

Changing the rules at this inordinately late juncture in the licensing process for PCS would unjustifiably and inexcusably undermine the legitimate reliance interests of the companies -- including Sprint Spectrum and APC -- that literally have staked billions of dollars on entering the PCS marketplace.[8/] The unfairness of switching the rules just as these companies are beginning commercial operation cannot be overstated. New entrants have made commitments to the Commission based on the rules as they existed during the licensing process. Changing these rules now would endanger these licensees' ability to succeed and undermine any

---

[8/] The reliance interests of new PCS licensees and bidders are not based solely upon license payments, but on efforts to engineer and build PCS systems, relocate incumbent microwave users, hire hundreds of new employees, and undertake all manner of other costs that are included in the commencement of a new wireless telecommunications service.

confidence that future bidders will have in the Commission's regulatory structures.[9/] A rule change at this late juncture also would create an open invitation for the filing of frivolous legal challenges to long-issued licenses.[10/]

C.

Some claim, counterintuitively, that permitting fewer companies to effectively bid for 10 MHz licenses would somehow benefit competition. Quite to the contrary, permitting cellular companies to obtain two 10 MHz PCS licenses would seriously diminish and skew competition in the wireless market. A cellular company with substantial resources -- particularly one owned by an incumbent local exchange carrier -- would be highly motivated to obtain both licenses. Such a result would deny an effective ability for the Block A & B licensees to bid for 10 MHz licenses. This dramatic and ill-advised policy change would, in effect, constitute a regulatory attempt to pick winners: the bidding process could become a mechanism for cellular carriers to entrench their competitive advantages for years to come. The Commission should maintain the policies on PCS-cellular cross-ownership that have successfully begun to structure a

---

[9/] The Commission's PCS-cellular cross-ownership rule, too, is adequately supported by the record. We agree with the comments of the Personal Communications Industry Association that the 20 percent ownership threshold -- which is the most generous cross-ownership test in the Commission's Rules for any service -- should be retained.

[10/] See Comments of Sprint Corp.

competitive marketplace; any rule change at this point would endanger the progress the Commission has made to this point.[11/]

The differential in resources between existing cellular incumbents (which have enjoyed a decade of record profits in many cases) and nascent PCS companies is exacerbated by the point in time in which this auction will be held. Although we do not suggest that the auction should be delayed,[12/] it should be noted that settled and profitable cellular companies will be bidding against new PCS licensees that are in a capital-intensive start-up phase. Changing the rules to further benefit the stronger class of bidders would hardly benefit competition or create a fair auction. In fact, such a rule change would undermine both wireless competition and the integrity of the Commission's auction processes.

[11/] Such a change also could undermine existing relationships Block C bidders may have with out-of-region cellular companies. If the rules change, these out-of-region licensees may have an incentive to minimize support of their Block C partners in favor of attempting to solidify their position in the home markets by bidding for multiple 10 MHz PCS licenses.

[12/] Sprint Spectrum agrees with the comments of Sprint Corp. that the Block D & E auctions should be held on a different schedule from the Block F auction to prevent some bidders from being able to bid on three spectrum blocks simultaneously while others may bid upon only two.

* * *

For these reasons, the essential rules underlying the PCS and cellular market structure must be retained.

Respectfully submitted,

AMERICAN PERSONAL COMMUNICATIONS

By: _____
Anne P. Schelle
Vice President, External Affairs

AMERICAN PERSONAL COMMUNICATIONS
One Democracy Center
6901 Rockledge Drive, Suite 600
Bethesda, Maryland 20817
(301) 214-9200

SPRINT SPECTRUM L.P.

By: _____
Jonathan M. Chambers
Vice President of Public Affairs

SPRINT SPECTRUM L.P.
1801 K Street, N.W., Suite M-112
Washington, D.C. 20036
(202) 835-3617

April 25, 1996